

Texarkana, Ark., Aug. 1, 1913.  
Lieutenant Governor, Senate Chamber,  
Austin, Texas:

I will contest election and seating A.  
C. Oliver as Senator.

C. A. WHEELER.

#### BILLS AND RESOLUTIONS.

(By Unanimous Consent.)

By Senator Morrow:

Senate bill No. 12, A bill to be entitled  
"An Act to amend Chapter 132 of the  
Acts of the Thirty-third Legislature,  
entitled 'An Act to provide for inde-  
terminate sentences of persons convicted  
of certain crimes; for the termination  
of such sentences and the release of  
such persons on parole; providing for  
exemption from the operations of the  
law in certain cases, and repealing all  
laws in conflict herewith, and declar-  
ing an emergency.'"

Read first time and referred to Com-  
mittee on State Penitentiaries.

#### ADJOURNMENT.

On motion of Senator Hudspeth, the  
Senate, at 5:15 o'clock p. m., adjourned  
until 10 o'clock Monday morning.

#### APPENDIX.

##### COMMITTEE REPORT.

(Floor Report.)

Austin, Texas, August 1, 1913.

Hon. Will H. Mayes, President of the  
Senate.

Sir: Your Committee on Penitenti-  
ary Affairs, to whom was referred  
Senate bill No. 12, A bill to be entitled  
"An Act to amend Chapter 132, Acts of  
the Thirty-third Legislature."

Beg leave to report that we have had  
the same under consideration, and rec-  
ommend that the same do pass, and that  
it be printed.

Hudspeth, Chairman; Harley, Nugent,  
Taylor, Real and Greer.

#### PETITIONS AND MEMORIALS.

Lieutenant Governor Mayes presented  
the following petition:

College Station, Tex., July 31, 1913.

Lieutenant Governor W. H. Mayes, Aus-  
tin, Texas:

We request you give strongest sup-  
port appropriation bill as passed House.  
Commend and thank you.

EDWARD W. KNOX,

CHARLES B. METCALFE.

#### TWELFTH DAY.

Senate Chamber.

Austin, Texas,

Monday, August 4, 1913.

The Senate met pursuant to adjourn-  
ment and was called to order by Lieu-  
tenant Governor Will H. Mayes.

Roll call, a quorum was present, the  
following Senators answering to their  
names:

Astin.	Lattimore.
Bailey.	McGregor.
Brelsford.	McNealus.
Clark.	Morrow.
Collins.	Nugent.
Conner.	Taylor.
Cowell.	Terrell.
Darwin.	Townsend.
Gibson.	Warren.
Greer.	Watson.
Harley.	Westbrook.
Hudspeth.	Wiley.
Johnson.	Willacy.

Absent.

Carter. Real.

Prayer by the Chaplain.

Pending the reading of the Journal of  
Friday, the same dispensed with on  
motion of Senator Taylor.

#### SIMPLE RESOLUTION.

By Senator Townsend:

Whereas, There is to be a contest  
filed before this body contesting the seat  
of the First Senatorial District of  
Texas; therefore, be it

Resolved by the Senate, That the  
Lieutenant Governor be requested to add  
all names of Senators to the Committee  
on Privileges and Elections.

The resolution was read, and Senator  
Watson moved to table the resolution,  
which motion was lost by the following  
vote:

Yeas—8.

Astin.	Harley.
Bailey.	Hudspeth.
Clark.	Morrow.
Gibson.	Watson.

Nays—13.

Brelsford.	Darwin.
Collins.	Greer.
Conner.	Johnson.
Cowell.	Lattimore.

McNealus.  
Taylor.  
Townsend.

Warren.  
Wiley.

Present—Not Voting.

Terrell.

Absent.

Carter.  
McGregor.  
Nugent.

Real.  
Westbrook.  
Willacy.

The resolution was then adopted by the following vote:

Yeas—13.

Brelsford.  
Collins.  
Conner.  
Cowell.  
Darwin.  
Greer.  
Johnson.

Lattimore.  
McNealus.  
Taylor.  
Townsend.  
Warren.  
Wiley.

Nays—8.

Astin.  
Bailey.  
Clark.  
Gibson.

Harley.  
Hudspeth.  
Morrow.  
Watson.

Present—Not Voting.

Terrell.

Absent.

Carter.  
McGregor.  
Nugent.

Real.  
Westbrook.  
Willacy.

The Chair directed that all members of the Senate were added to the Committee on Privileges and Elections.

#### EXCUSED.

On account of important business:

Senator Carter, for all of this week, on motion of Senator Hudspeth.

Senator Warren, for non-attendance on last Friday, on motion of Senator Brelsford.

#### SIMPLE RESOLUTION.

By Senator Lattimore:

Whereas, There are now on file in the Pension Office of this State approximately two thousand applications for pensions made by Confederate soldiers and their widows which have not been acted upon, some of which have been there for more than ten years, and

many of which have been there for three or four years; and

Whereas, These men and women whom we honor are rapidly passing away, and if we are going to show our appreciation by the payment of the pension it should be done while they are still alive; and

Whereas, The present condition is in a measure due to a lack of system and to a lack of help to carry on the work of said office; now, therefore, be it

Resolved, That it is the sense of this body that the Pension Commissioner should at once employ a competent stenographer to aid him in the work and correspondence of said office, and that the administration of the affairs of said office should be hereafter so conducted as to pass upon applications in a reasonable time after they are filed, and we pledge ourselves to do our best to see that a sufficient appropriation is made to provide and pay for sufficient help to hereafter so conduct the affairs of said office.

LATTIMORE,  
COWELL,  
WILEY,  
TAYLOR,  
MCNEALUS.

The resolution was read and adopted.

#### EXECUTIVE MESSAGE.

Governor's Office,  
Austin, Texas, August 4, 1913.

To the Senate:

On July the 22d, by message, I advised you of the appointment of Ben E. Cabell of Dallas county to be a member of the Board of Prison Commissioners, and asked your advice and consent to his appointment.

On July 26th, by message, I advised you of the appointment of Hon. L. W. Tittle of Cherokee county, and Hon. R. W. Braham of Walker county, to be members of the Board of Prison Commissioners, and asked your advice and consent to their appointment.

I now respectfully recall the names of the above mentioned appointees from the further consideration of the Senate at this time.

Respectfully submitted.

O. B. COLQUITT,  
Governor of Texas.

RELATING TO SEATING OF A. C.  
OLIVER AS SENATOR-ELECT  
FROM FIRST DISTRICT.

The Chair had the following telegram read to the Senate:

New Boston, Tex., Aug. 4, 1913.

President of Senate, Austin, Texas:

Have canvassed returns First Senatorial District. A. C. Oliver plurality twenty-four votes. Certificate of election follows. C. A. Wheeler gives notice of contest.

LEE TIDWELL,  
County Judge, Bowie county.

The above message was read, and Senator Watson offered a resolution, but pending discussion withdrew same.

The Chair here announced the following petition on part of Mr. Wheeler and directed same to be printed in the Journal; and referred same to Committee on Privileges and Elections.

Austin, Texas, August 4, 1913.

To Hon. A. C. Oliver:

You will please take notice, that it is my intention and purpose to and I shall contest your right to the office of Senator from the First Senatorial District of the State of Texas, it being my contention that you were not legally elected and have not been legally elected to said office at the election held throughout said district on July 19, 1913, but that I was, at said election, legally elected to the office of Senator from the First Senatorial District of Texas.

I herewith hand to you a copy of my original petition, upon which I base my said contest and upon which I shall offer evidence.

Respectfully,  
(Signed) C. A. WHEELER.

I hereby certify that on the 4th day of August, A. D. 1913, I delivered to A. C. Oliver in person in the city of Austin, Travis county, Texas, a true copy of the above and foregoing notice, together with a true copy of the petition mentioned in said notice.

(Signed) C. A. WHEELER.

In re Contest of the Election of A. C. Oliver as Senator from the First Senatorial District of Texas.

To the Honorable the Senate of Texas:

Your petitioner, C. A. Wheeler, ap-

pears herein for the purpose of contesting before this Honorable Body the election of A. C. Oliver as Senator from the First Senatorial District of Texas, and as his grounds for said contest doth allege and is prepared to prove the following:

1. Your petitioner and the said A. C. Oliver and Lewie H. Henry, Esq., were candidates in a special election called by the Governor of Texas to be held in the various voting places in the First Senatorial District of Texas on the 19th day of July, 1913, to fill the vacancy occasioned by the resignation of Horace W. Vaughan from this body. Said election was called, and under the law should have been conducted in accordance with the election laws of the State of Texas, and your petitioner was entitled to have his candidacy tested and decided in accordance with the terms and provisions of said laws.

2. Among the voting places in said district is Douglasville, in the county of Cass, said town being the home of A. C. Oliver, contestee herein. There were 138 votes polled at said box during the said election, of which number 118 were counted by the judges for the contestee herein and 18 for your petitioner and 2 for Lewie H. Henry. With the exception of the said box, your petitioner in said district received 1667 votes and contestee herein received 1591 votes and Lewie H. Henry received 1187 votes. Your petitioner, therefore, unless defeated by the votes cast in the said Douglasville box, received a majority of the legal votes cast in said election, and has been duly and legally elected to the office of Senator from said district.

3. Your petitioner shows that R. B. McWhorter was the presiding judge and B. B. Webster and ..... were the other judges at said box; that the votes cast in the said Douglasville box were not legal votes, and none of same should be counted under the law, either for or against any of the candidates in said election, because:

(a) Neither the said presiding judge nor any of the other judges before opening the polls or at any time thereafter until eighty votes had been received and cast took the oath of affirmation as officers of election and as provided by law. Your petition is unable to give the names of the voters who cast the first eighty votes counted or for whom they were voted, for want of knowledge,

but he avers the facts to be that the votes cast in said box numbered one to eighty, inclusive, were cast at a time before the judges had taken the oath of office and when, under the law, they had no right to receive or count them.

(b) Among the votes cast in said box and accepted by the judges and counted in the result were the votes of a large number of men, many of whom were negroes, who were not entitled to vote under the law, and whose votes were illegal under the law, because they had not paid their poll tax for the year 1912 prior to the 1st day of February, 1913, and were not exempt from the payment of such poll tax. Petitioner is unable to give the names and number of said illegal voters for want of knowledge, but he says that a comparison of the list of legal voters of Cass county, Texas, at said Douglasville box who had paid their poll tax, or were exempt from such payment, with the poll list made out at said election will disclose their names.

(c) The following persons, among others, voted at said box: J. P. Swint, A. O. Carlo, Boss Young, W. J. Hendrix, J. C. Cherry, J. M. Dupree, R. H. Williams, T. S. Allen, L. G. Dupree, Frank Dickerson, W. J. L. Heath, J. M. Ormand, George Young, Nelson Frederick, G. W. Smith, Ena Swint, Dud Gray, Leona Gray, J. T. Blalock, Felix Vaden, A. S. Pate, W. R. Warren, Freeman Washington, U. Samuel, W. J. McCall, Will Edwards, Will Legg, Eugene Young, R. B. McCoy, J. M. McCoy and Allen Frederick.

Some of said men are among those referred to in the preceding subdivision as being unauthorized to vote; but as regards all of said list, your petitioner says that none of the names of the persons mentioned above appear upon the list of the voters at said voting box who had paid their poll tax for the year 1912 prior to February 1, 1913, or were exempt from such payment, as your petitioner is informed and believed. That L. G. Dupree, W. J. L. Heath, G. W. Smith and Felix Vaden voted at said box and at the time resided at and in another voting precinct other than the Douglasville precinct, and were not legal voters at said Douglasville voting box, and at the time poll tax receipts were issued to them they each resided in precincts other than said Douglasville precinct. Your petitioner avers upon information and belief that all of said men voted for contestee herein and against your petitioner.

(d) The said officers of the election and each of them at the noon hour on the said election day, to wit, July 19, 1913, left the voting place, the box containing the ballots that had been cast, the unused ballots, and the entire equipment and supplies and paraphernalia of the election in the room where said election was held for a period of one hour or more, locking the door to same, during which they partook of refreshments. Said refreshments were taken during the hours provided by law for voting and before the canvass of the votes had been taken, but they were not taken at the said polling place and were not taken in view of the ballot box, but they were taken at remote and distant places out of the view and entirely removed from said box and voting place; nor did the said judges partake of refreshments at the same place, but repaired to their several homes and assembled at a later time and reopened the voting place.

(e) When the ballots thus cast had been counted, the managers of the said election did not in person make out triplicate returns of the same and certify them to be correct and sign them officially in the manner provided by law. The presiding judge at said box did not sign said return at all, but gave B. B. Webster, one of the judges, authority to sign his name, and the signature that appears upon said returns on which the certificate of contestee's election was issued is not the genuine signature of R. B. McWhorter, but was signed by B. B. Webster at the request and instance of R. B. McWhorter during his absence.

(f) None of the ballots cast and counted in said voting box were signed by the presiding judge thereof, nor were they, as petitioner is informed and believes, numbered. He makes the charge upon information and belief as to the numbering of said ballots, but alleges the fact to be that not one of the ballots used in said election at said box bore the signature of the presiding judge, R. B. McWhorter, and that all of the ballots so cast, despite the fact that they were not signed as provided by law, and despite the fact that the law expressly provides that the judges shall count no ballots which do not bear the signature of the presiding judge or which are unnumbered, all of said ballots were counted with the result that 118 of same were counted as aforesaid in favor of contestee herein and 18 in favor of your petitioner.

4. Your petitioner shows that for the reasons mentioned in the preceding paragraph all of the ballots cast in the said Douglasville box were illegal and unlawful votes and should not have been counted for any of said candidates. That except for such unlawful and illegal votes, your petitioner has a majority of the votes cast by the qualified voters of the First Senatorial District of Texas, and under the law is entitled to a seat in this body and all the privileges and emoluments and benefits of the said office.

5. He therefore files this, his contest, before this honorable body, attaching hereto the certificate of Hon. Lee Tidwell, county judge of Bowie county, Texas, showing that the 4th day of August, 1913, is the return day of the said election; that is to say, the day on which the votes in said election were counted, that a certificate of election was issued to contestee herein upon said date. Your petitioner also attaches a copy of a notice of this contest served upon the contestee herein, on the day of August, 1913, showing your petitioner's purpose and intention to contest the election herein referred to, which notice was delivered to contestee in person.

6. Wherefore, your petitioner prays that this honorable body hear this contest in the manner provided by law, and that he be declared entitled to a seat in this honorable body as Senator from the First Senatorial District of Texas, and be declared duly and legally elected as such.

(Signed) C. A. WHEELER,  
Contestant.

I, C. A. Wheeler, contestant named in the above and foregoing petition, state, upon my oath, that the facts alleged in said petition are true to the best of my knowledge and belief.

(Signed) C. A. WHEELER.

Sworn to and subscribed before me this 4th day of August, A. D. 1913.

(Signed) O. W. HARDY.

(Seal) Notary Public in and for  
Travis County, Texas.

In Re Contest of C. A. Wheeler of the  
Election of A. C. Oliver as Senator  
From the First Senatorial  
District.

Original Petition of C. A. Wheeler.

Filed in the Senate of Texas, this 4th day of August, 1913, at 10:40 o'clock a. m.

W. V. HOWERTON,  
Secretary of the Senate.

August 4, 1913.

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Referred to Committee on Privileges and Elections.

#### SIMPLE RESOLUTION.

By Senator Brelsford:

Resolved, That a committee of three be appointed by the President of the Senate to draft and have printed in the Journal of tomorrow a penitentiary bill, briefly providing for the following amendments:

1. The appointment of a Prison Commission to have the exclusive control of the penitentiary system, to be paid \$6.00 per day.

2. Authority to be conferred upon said Commission to choose a general manager and executive officer, which manager or executive officer shall be chosen by said board upon their own nomination, and who may be employed at a salary of not to exceed \$6000 per annum, and who when appointed may be a resident of this State or without this State.

3. An auditor to be appointed by the Attorney General, the Comptroller and the State Treasurer, and all disbursements made through the Comptroller's Office, and all receipts of the system to be paid in to the State Treasury.

4. That all matters of detailed management, discipline and financial policy be left in the hands of said board of managers in so far as not limited or denied by existing law.

5. That said board shall at any and all times upon request of the Governor submit full and detailed report to the Governor of any matter pertaining to the penitentiary system or its operations, which report shall be made in writing and under oath by the board of managers within thirty days from the receipt of the written request of the Governor.

6. That the board of managers shall have no authority to purchase or sell any real property belonging to the prison system or to be purchased for the prison system until said proposition has been submitted to and approved by the next succeeding Legislature.

The resolution was read and, pending discussion, Senator Wiley moved that the resolution be referred to Committee on Penitentiary Affairs.

Senator Morrow moved, as a substitute, that a committee of three Senators be appointed to draft amendments to Senate bill No. 6, and report on same tomorrow.

Senator Wiley made the point of order that the substitute motion was not germane, and the Chair sustained same.

Action recurred on the motion to refer the resolution to Committee on Penitentiary Affairs, and the same was adopted.

Morning call concluded.

#### SENATE BILL NO. 6.

The Chair laid before the Senate, as special order, on second reading,

Senate bill No. 6, A bill to be entitled "An Act to amend Chapters 1 and 2, Title 104, Revised Civil Statutes of 1911, the same being an act passed by the Fourth Called Session of the Thirty-first Legislature, and entitled 'An Act to establish a prison system and declaring the policy of the State with reference thereto,' and declaring an emergency."

Senator Townsend moved that action on the bill be deferred until tomorrow morning, and the motion was amended by motion of Senator Hudspeth, to defer the action till Wednesday morning and that it be made a special order, and the amended motion was adopted.

#### SIMPLE RESOLUTION.

(Pending Business.)

The Chair laid before the Senate, as pending business, a simple resolution by Senator Collins, relating to the report of the special committee appointed at the Regular Session relating to the recommendation for pardon for certain convicts.

Action recurred on the pending substitute for the pending amendment (see Thursday's Journal for the amendment and substitute).

Senator Clark moved the previous question on the amendment and the resolution, which motion being duly seconded, was so ordered.

Action recurred on the substitute for the pending amendment, and the same was lost by the following vote:

Yeas—11.

Astin.	McNealus.
Bailey.	Terrell.
Clark.	Townsend.
Darwin.	Westbrook.
Greer.	Wiley.
Harley.	

Nays—13.

Collins.	Morrow.
Conner.	Nugent.
Cowell.	Taylor.
Gibson.	Warren.
Hudspeth.	Watson.
Johnson.	Willacy.
Lattimore.	

Absent.

McGregor.	Real.
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PAIRED.

Senator Brelsford (present), who would vote "nay," with Senator Carter (absent), who vote "yea."

Action then recurred on the pending amendment by Senator Cowell, and the same was adopted by the following vote:

Yeas—21.

Astin.	Morrow.
Bailey.	Nugent.
Clark.	Taylor.
Conner.	Terrell.
Cowell.	Townsend.
Darwin.	Warren.
Gibson.	Watson.
Greer.	Westbrook.
Harley.	Wiley.
Johnson.	Willacy.
Lattimore.	

Nays—3.

Brelsford.	Hudspeth.
Collins.	

Present—Not Voting.

McNealus.

Absent.

McGregor.	Real.
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Absent—Excused.

Carter.

#### REASON FOR VOTE.

I vote "yea" on the amendment by the Senator from Grayson for the reason that, while I favor the resolution as offered by the Senator from Jefferson, I believe that we get all of the real substance of the resolution as originally offered, and thereby sustain the action of our committee and hold out a hope to the worthy and meritorious convicts, and place a premium upon reform and good conduct on the part of such convicts.

NUGENT.

The resolution was then adopted as amended by the following vote:

Yeas—17.

Bailey.	Lattimore.
Brelsford.	Morrow.
Collins.	Nugent.
Conner.	Taylor.
Cowell.	Terrell.
Gibson.	Warren.
Harley.	Watson.
Hudspeth.	Willacy.
Johnson.	

Nays—8.

Astin.	McNealus.
Clark.	Townsend.
Darwin.	Westbrook.
Greer.	Wiley.

Absent.

McGregor. Real.

Absent—Excused.

Carter.

#### ADJOURNMENT.

On motion of Senator Willacy, the Senate, at 12:10 o'clock p. m., adjourned until 10 o'clock tomorrow.

#### THIRTEENTH DAY.

Senate Chamber,

Austin, Texas,

Tuesday, August 5, 1913.

The Senate met pursuant to adjournment, and was called to order by Lieutenant Governor Will H. Mayes.

Roll call, a quorum being present, the following Senators answering to their names:

Astin.	Lattimore.
Bailey.	McNealus.
Brelsford.	Morrow.
Clark.	Nugent.
Collins.	Real.
Conner.	Taylor.
Cowell.	Terrell.
Darwin.	Townsend.
Gibson.	Warren.
Greer.	Watson.
Johnson.	Westbrook.
Harley.	Wiley.
Hudspeth.	Willacy.

Absent.

McGregor.

Absent—Excused.

Carter.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with, on motion of Senator Cowell.

#### EXCUSED.

On account of important business: Senator Real, for non-attendance on yesterday, on motion of Senator Cowell.

#### SIMPLE RESOLUTION.

By Senator Clark:

Be it resolved by the Senate, That the Superintendent of Public Buildings and Grounds be instructed to place an electric fan in the Senate Chamber directly over the Secretary's desk, the expense of same to be paid for out of the contingent expense fund of the Senate.

The resolution was read and referred to Committee on Contingent Expenses.

#### SIMPLE RESOLUTION.

By Senator Clark:

Resolved by the Senate, That whereas it is necessary that the members get their mail by 7:30 o'clock in the morning in order to answer same before the session begins; therefore, be it

Resolved, That the Postmistress be instructed to have the mail ready for delivery to the Senators as early as 7:30 in the morning, and that she remain to make up and deliver mail as late as 7 o'clock in the evening, and that the President of the Senate designate an employe to assist the Postmistress in this matter.

The resolution was read, and Senator Watson offered the following substitute:

Be it resolved by the Senate, That the President of the Senate appoint three members of the Senate to arrange for the delivery to the Senate Postmistress directly from the Austin postoffice of all mail addressed to the Senators, and that arrangements be made for delivery of same at such hours as will be satisfactory to the membership of this Senate.

The substitute was read and adopted.

The Chair appointed the following committee in accordance with the above substitute: Senators Watson, Clark and Astin.